

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

CALIFORNIA LIVING & ENERGY (a division
of William Lilly & Associates, Inc.) and DUCT
TESTERS, INC.,

Complainants,

vs.

MASCO CORPORATION and
ENERGYSENSE, INC.,

Respondents.

Docket Number 08-CRI-01

**RESPONDENTS MASCO
CORPORATION'S AND
ENERGYSENSE, INC.'S
RESPONSES TO REQUESTS FOR
PRODUCTION OF DOCUMENTS
AND ADDITIONAL INFORMATION**

Respondents Masco Corporation and EnergySense, Inc. (hereinafter referred to as
"Masco" or "EnergySense," respectively, or "Respondents") hereby respond to the California
Energy Commission's Request for Production of Documents and Additional Information as
follows.

GENERAL OBJECTIONS AND RESERVATIONS

Respondents reserve their right to rely on any information or other evidence which may
develop or come to their attention at a later time. Respondents' objections as set forth herein are
made without prejudice to Respondents' right to assert further objections or responses should
Respondents discover additional grounds for such objections or responses. Respondents make
the following general objections to each document request. The assertion of the same, similar,
or additional objections, or the provision of any responses to any of these demands, shall not
waive any of these objections as set forth below:

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DATE	OCT 31 2008
RECD.	NOV 03 2008

1 A. Respondents object to each Request to the extent it purports to impose any burden
2 or obligation in excess of the requirements of California Code of Civil Procedure section
3 2031.010.

4 B. Respondents object to each Request to the extent it seeks information protected
5 from disclosure by any applicable privilege, including, without limitation, the attorney-client
6 privilege, the work product privilege, the mediation privilege, or any other privilege or doctrine
7 protecting information and/or documents from disclosure.

8 C. Respondents object to each Request to the extent it seeks information that is private
9 and/or confidential and constitutes proprietary, business, trade secret, financial or commercially
10 sensitive information of Respondents and/or third parties to this complaint.

11 D. Respondents object to each Request to the extent it seeks information that is neither
12 relevant nor reasonably calculated to lead to the discovery of admissible evidence.

13 E. Respondents object to each Request to the extent it purports to seek documents that
14 are not in Respondents' possession, custody or control or are equally or more readily available
15 to Complainants.

16 F. Respondents object to each Request to the extent that it is vague, unclear,
17 ambiguous and/or capable of multiple interpretations.

18 G. Respondents object to each Request to the extent that it is overly broad and/or
19 responding thereto would be unreasonably burdensome.

20
21 **RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS AND**
22 **ADDITIONAL INFORMATION**

23 **REQUEST NO. 1:**

24 Copies of all CONTRACTS between Masco Corporation ("Masco") and EnergySense,
25 Inc. ("EnergySense").

26 **MASCO'S AND ENERGYSense'S JOINT RESPONSE TO REQUEST NO. 1:**

27 EnergySense has not entered into any contracts with Masco Corporation.
28

1 **REQUEST NO. 2:**

2 Copies of all CONTRACTS between EnergySense and builders.

3 **MASCO'S RESPONSE TO REQUEST NO. 2:**

4 Not applicable.

5 **ENERGYSENSE'S RESPONSE TO REQUEST NO. 2:**

6 Respondent incorporates by reference each of its general objections and reservations.
7 Subject to and without waiving the foregoing objections, EnergySense responds as follows:

8 EnergySense has not entered into any contracts directly with builders. EnergySense has
9 provided testing services for builders through subcontracts with three subsidiaries of Masco
10 Corporation—American National Services, Inc., Builder Services Group, Inc., and Masco
11 Contractor Services of California, Inc.

12
13 **REQUEST NO. 3:**

14 Copies of CONTRACTS between Masco or any Masco-related company¹ that mentions
15 completion of quality assurance by EnergySense or field verification for the purpose of
16 Title 24 compliance.

17 **MASCO'S RESPONSE TO REQUEST NO. 3:**

18 Respondent incorporates by reference each of its general objections and reservations. In
19 order to be cooperative, Respondent has interpreted the request broadly as a request for copies of
20 contracts between any Masco company and any other entity that mention completion of quality
21 assurance or field verification by EnergySense for Title 24 purposes. The response below
22 reflects this interpretation. Subject to and without waiving the foregoing objections, and based
23 upon Respondent's understanding of this request, Masco Corporation responds as follows:

24 Masco Corporation has not entered into contracts that mention completion of quality
25 assurance by EnergySense or field verification for the purpose of Title 24 compliance.

26
27 ¹ According to the CEC's Order, "Masco-related company" or "related company" means any parent,
28 affiliate, or subsidiary company or entity of Masco, or any company or entity related to Masco by
ownership interest.

1 **ENERGYSENSE'S RESPONSE TO REQUEST NO. 3:**

2 Respondent incorporates by reference each of its general objections and reservations.
3 Respondent further objects to this request as vague and ambiguous. In order to be cooperative,
4 Respondent has interpreted the request broadly as a request for copies of contracts between any
5 Masco company and any other entity that mention completion of quality assurance or field
6 verification by EnergySense for Title 24 purposes. The response below reflects this
7 interpretation. Subject to and without waiving the foregoing objections, and based upon
8 Respondent's understanding of this request, EnergySense responds as follows:

9 Upon information and belief, American National Services, Inc., Builder Services Group,
10 Inc., Masco Contractor Services of California, Inc., and their respective subsidiaries have entered
11 into contracts with builders that mention completion of quality assurance or field verification for
12 Title 24 purposes. Typically, such contracts do not mention EnergySense, although on occasion,
13 some contracts with builders have included a reference to EnergySense. American National
14 Services, Inc., Builder Services Group, Inc., Masco Contractor Services of California, Inc., and
15 their respective subsidiaries are independent companies and are not parties to this action, and the
16 California Energy Commission has no jurisdiction over them. Accordingly, they are not required
17 to produce any information or documents in this proceeding.

18 EnergySense maintains copies of some of these contracts with the builders in the ordinary
19 course of business. Without waiving any objections to the California Energy Commission's lack
20 of jurisdiction to request such documents, EnergySense will provide samples of such contracts
21 upon the execution of a satisfactory Confidentiality Agreement.

22 Additionally, American National Services, Inc., Builder Services Group, Inc., and
23 Masco Contractor Services of California, Inc., have entered into subcontracts with EnergySense
24 under the builder contracts referenced above. These subcontracts are non-exclusive and do not
25 require EnergySense raters to perform such services. Copies of the three subcontracts are
26 provided at Tab 1.

1 **REQUEST NO. 4:**

2 Copies of any advertising or other informational materials provided to builders by any
3 Masco-related company that identifies quality assurance or field verification provided by or
4 through EnergySense.

5 **MASCO'S AND ENERGYSense'S JOINT RESPONSE TO REQUEST NO. 4:**

6 Respondents incorporate by reference each of their general objections and reservations.
7 Subject to and without waiving the foregoing objections, and based upon Respondents'
8 understanding of this request, Respondents have attempted to be responsive to the Commission's
9 request as follows:

10 Respondents are unaware of any advertising or promotional materials provided to
11 builders that identify quality assurance or field verification provided by or through EnergySense.

12
13 **REQUEST NO. 5:**

14 PERCENTAGE of corporate voting shares that Masco owns, directly or indirectly
15 through one or more of its related companies, of EnergySense.

16 **MASCO'S AND ENERGYSense'S JOINT RESPONSE TO REQUEST NO. 5:**

17 Respondents incorporate by reference each of their general objections and reservations,
18 and, subject to and without waiving the foregoing objections, respond as follows:

19 Masco Corporation owns 100 percent of EnergySense's corporate voting shares.

20
21 **REQUEST NO. 6:**

22 NAMES of any PERSONS that are employed as a board member or officer in more than
23 one of the companies under the Masco corporate structure, including any Masco-related
24 company.

25 **MASCO'S RESPONSE TO REQUEST NO. 6:**

26 Respondent incorporates by reference each of its general objections and reservations.
27 Subject to and without waiving the foregoing objections, Masco Corporation responds as
28 follows:

1 A list of the board members and officers of Masco Corporation is provided at Tab 2.

2 **ENERGYSENSE'S RESPONSE TO REQUEST NO. 6:**

3 Respondent incorporates by reference each of its general objections and reservations.
4 Subject to and without waiving the foregoing objections, EnergySense responds as follows:

5 A list of the board members and officers of EnergySense is provided at Tab 3.

6

7 **REQUEST NO. 7 (a) - (e):**

8 Does Masco have corporate or other authority over EnergySense for any of the
9 following:

- 10 (a) Selecting directors and corporate officers.
- 11 (b) Appointing a majority of the members of the governing board.
- 12 (c) Using or directing the use of the individual assets of EnergySense to
13 achieve the objective of Masco.
- 14 (d) Examination of financial reports and business plans, or otherwise hold
15 accountable EnergySense and its management for performance expectations.
- 16 (e) Voting provisions in the articles of incorporation of EnergySense, or
17 provisions that prohibit amendments of said articles without the approval of Masco.

18 **MASCO'S AND ENERGYSENSE'S JOINT RESPONSE TO REQUEST NO. 7 (a):**

19 Respondents incorporate by reference each of their general objections and reservations.
20 Subject to and without waiving the foregoing objections, they respond as follows:

21 Yes.

22 **MASCO'S AND ENERGYSENSE'S JOINT RESPONSE TO REQUEST NO. 7 (b):**

23 Respondents incorporate by reference each of their general objections and reservations.
24 Subject to and without waiving the foregoing objections, they respond as follows:

25 Yes.

26 **MASCO'S AND ENERGYSENSE'S JOINT RESPONSE TO REQUEST NO. 7 (c):**

27 Respondents incorporate by reference each of their general objections and reservations.
28 Subject to and without waiving the foregoing objections, they respond as follows:

1 Masco's subsidiaries are generally independent and operate autonomously from Masco
2 Corporation. Masco Corporation pursues a 'bottom-up' rather than a 'top-down' approach to
3 building corporate value by encouraging its subsidiaries, including EnergySense, to develop
4 independent business plans and strategic opportunities that add value to Masco. As the parent of
5 a large conglomerate of more than 200 companies worldwide, Masco Corporation primarily
6 exercises high-level oversight functions and typically does not exercise day-to-day operational
7 authority or control over its subsidiaries. This is particularly true for EnergySense, which is one
8 of the smallest of Masco's subsidiaries (representing less than 0.02 percent of Masco
9 Corporation's consolidated revenues). Masco Corporation has little input into or oversight over
10 EnergySense's daily operations.

11 EnergySense's operations are directed by a full-time general manager, who has
12 autonomy in determining the company's business plans and operations. EnergySense's general
13 manager and raters have been trained and certified by the California Home Energy Efficiency
14 Rating Service ("CHEERS") and adhere rigidly to the terms and conditions contained in their
15 Rater Agreements with CHEERS. EnergySense's general manager and raters conduct their
16 operations in an independent, objective and thoroughly professional manner to provide true,
17 accurate and complete field verification and diagnostic testing services without influence from
18 the entities that perform the work that is rated or tested by EnergySense's employees.
19 Moreover, they have never been instructed by any officer, director or employee of EnergySense,
20 Masco Corporation or any other Masco-related company to violate their obligations to provide
21 true, accurate and complete field verification or diagnostic testing services.²

22 **MASCO'S AND ENERGYSense'S JOINT RESPONSE TO REQUEST NO. 7 (d):**

23 Respondents incorporate by reference each of their general objections and reservations.
24 Subject to and without waiving the foregoing objections, they respond as follows:

25
26 ² Masco Corporation has a corporate ethics policy that it stringently applies to all of its subsidiaries.
27 Section 1 of the ethics policy states "All employees, officers and members of the Board of Directors
28 ("Directors") of Masco Corporation and its subsidiaries (the "Company") should respect and comply
with the laws, rules and regulations of all jurisdictions which are applicable to the Company." A copy of
the policy is located at http://www.masco.com/corporate_information/governance/code_of_conduct.html.

1 Masco Corporation periodically monitors and exercises high-level oversight over the
2 financial reports and business plans of EnergySense, as it does for all of its subsidiaries. Masco
3 Corporation is not involved in the day-to-day management of EnergySense.

4 **MASCO'S AND ENERGYSENSE'S JOINT RESPONSE TO REQUEST NO. 7 (e):**

5 Respondents incorporate by reference each of their general objections and reservations.
6 Subject to and without waiving the foregoing objections, they respond as follows:

7 EnergySense's Certificate of Incorporation in Delaware does not include any voting
8 requirements or restrictions with respect to amending or changing the Certificate of
9 Incorporation.

10
11 **REQUEST NO. 8:**

12 Did Masco prepare or authorize any of the bylaws of EnergySense defining the
13 designation and authority of officers, their terms of office, and their removal (for cause or
14 otherwise)?

15 **MASCO'S AND ENERGYSENSE'S JOINT RESPONSE TO REQUEST NO. 8:**

16 Respondents incorporate by reference each of their general objections and reservations.
17 Subject to and without waiving the foregoing objections, they respond as follows:

18 Yes. Masco Corporation's legal department prepared EnergySense's bylaws at the time
19 of EnergySense's formation.

20
21 **REQUEST NO. 9:**

22 Do the bylaws of EnergySense include procedures whereby Masco elects and removes
23 directors of EnergySense, or prohibit amendments of its bylaws without the approval of Masco?

24 **MASCO'S AND ENERGYSENSE'S JOINT RESPONSE TO REQUEST NO. 9:**

25 Respondents incorporate by reference each of their general objections and reservations.
26 Subject to and without waiving the foregoing objections, they respond as follows:

27 Under EnergySense's bylaws, the members of EnergySense's board of directors are
28 elected by a vote of EnergySense's shareholders, of which Masco Corporation is the sole

1 shareholder. Additionally, the bylaws may be amended, added to, repealed or replaced by
2 EnergySense's board of directors without the approval of Masco Corporation.

3
4 **REQUEST NO. 10:**

5 Does Masco or any Masco-related company have a debt agreement with EnergySense?

6 **MASCO'S AND ENERGYSENSE'S JOINT RESPONSE TO REQUEST NO. 10:**

7 Respondents incorporate by reference each of their general objections and reservations.
8 Subject to and without waiving the foregoing objections, they respond as follows:

9 No. EnergySense does not have any debt agreements with Masco Corporation or any
10 other Masco-related company.

11
12 **REQUEST NO. 11:**

13 Does Masco or any Masco-related company have any employees who are also employees
14 of EnergySense?

15 **MASCO'S AND ENERGYSENSE'S JOINT RESPONSE TO REQUEST NO. 11:**

16 Respondents incorporate by reference each of their general objections and reservations.
17 Subject to and without waiving the foregoing objections, they respond as follows:

18 No. EnergySense's raters and general manager are EnergySense employees and are not
19 employees of Masco Corporation or any other Masco-related company. Furthermore, none of
20 EnergySense's corporate officers or directors is an employee of EnergySense or of American
21 National Services, Inc., Builder Services Group, Inc., Masco Contractor Services of California,
22 Inc., or their respective subsidiaries.

23
24 **REQUEST NO. 12:**

25 Does Masco or any Masco-related company, other than EnergySense, mention
26 EnergySense in any written, verbal, radio, television, internet or e-mail advertising or
27 information?
28

1 **MASCO'S RESPONSE TO REQUEST NO. 12:**

2 Respondent incorporates by reference each of its general objections and reservations.
3 Subject to and without waiving the foregoing objections, Masco Corporation responds as
4 follows:

5 Masco Corporation does not mention EnergySense in any advertising or promotional
6 communications. Because Masco Corporation is not involved in the day-to-day operations of its
7 subsidiaries, it does not have direct knowledge of any such communications by its subsidiaries.

8 **ENERGYSENSE'S RESPONSE TO REQUEST NO. 12:**

9 Respondent incorporates by reference each of its general objections and reservations.
10 Subject to and without waiving the foregoing objections, EnergySense responds as follows:

11 Upon information and belief, Masco-related companies other than EnergySense do not
12 mention EnergySense in their advertising and promotional communications, although American
13 National Services, Inc., Builder Services Group, Inc., and Masco Contractor Services of
14 California, Inc., and their respective subsidiaries, may on occasion make reference to
15 EnergySense for logistical purposes (e.g., scheduling or to identify the independent entity
16 performing the testing service) when communicating with builders regarding testing services to
17 be performed under their contracts with the builders.

18
19 **REQUEST NO. 13:**

20 Does EnergySense mention Masco or any Masco-related company in any written, verbal,
21 radio, television, internet or e-mail advertising or information?

22 **MASCO'S RESPONSE TO REQUEST NO. 13:**

23 Not applicable.

24 **ENERGYSENSE'S RESPONSE TO REQUEST NO. 13:**

25 Respondent incorporates by reference each of its general objections and reservations.
26 Subject to and without waiving the foregoing objections, EnergySense responds as follows:

27 EnergySense does not mention any services provided by Masco Corporation or any other
28 Masco-related company in any advertising or promotional communications. However, it may

1 make occasional reference to American National Services, Inc., Builder Services Group, Inc.,
2 Masco Contractor Services of California, Inc., or their respective subsidiaries in
3 communications with builders for logistical purposes (e.g., scheduling or rework needed).
4

5 **REQUEST NO. 14:**

6 Does Masco or any Masco-related company, other than EnergySense, provide customer
7 referrals to EnergySense?

8 **MASCO'S AND ENERGYSense'S JOINT RESPONSE TO REQUEST NO. 14:**

9 Respondents incorporate by reference each of their general objections and reservations.
10 Subject to and without waiving the foregoing objections, they respond as follows:

11 No. Upon information and belief, Masco Corporation and its related companies, other
12 than EnergySense, do not provide customer referrals to EnergySense.
13

14 **REQUEST NO. 15:**

15 Does EnergySense provide customer referrals to Masco or any Masco-related company?

16 **MASCO'S RESPONSE TO REQUEST NO. 15:**

17 Not applicable.

18 **ENERGYSense'S RESPONSE TO REQUEST NO. 15:**

19 Respondent incorporates by reference each of its general objections and reservations.
20 Subject to and without waiving the foregoing objections, EnergySense responds as follows:

21 EnergySense does not provide customer referrals to Masco Corporation or any other
22 Masco-related company as related to any products or services for which field verification or
23 diagnostic testing is required under Title 24.
24
25
26
27
28

1 **REQUEST NO. 16:**

2 Does Masco or any Masco-related company, besides EnergySense, mention in bid
3 responses or price sheets any services provided by EnergySense?

4 **MASCO'S RESPONSE TO REQUEST NO. 16:**

5 Respondent incorporates by reference each of its general objections and reservations.
6 Subject to and without waiving the foregoing objections, Masco Corporation responds as
7 follows:

8 Masco Corporation does not mention in bid responses or price sheets any services
9 provided by EnergySense. Furthermore, Masco Corporation is not involved in the day-to-day
10 operations of its subsidiaries and does not have direct knowledge of any such mention of
11 EnergySense by its subsidiaries.

12 **ENERGYSENSE'S RESPONSE TO REQUEST NO. 16:**

13 Respondent incorporates by reference each of its general objections and reservations.
14 Subject to and without waiving the foregoing objections, EnergySense responds as follows:

15 Upon information and belief, American National Services, Inc., Builder Services Group,
16 Inc., Masco Contractor Services of California, Inc., and their respective subsidiaries, regularly
17 submit bid materials and price quotes to builders for quality assurance or field verification for
18 Title 24 and other purposes. Typically, such bid materials do not mention EnergySense,
19 although on occasion, some bid materials have included a reference to EnergySense.

20
21 **REQUEST NO. 17:**

22 Does EnergySense mention in bid responses or price sheets any services provided by
23 Masco or any Masco-related company?

24 **MASCO'S RESPONSE TO REQUEST NO. 17:**

25 Respondent incorporates by reference each of its general objections and reservations.
26 Subject to and without waiving the foregoing objections, Masco Corporation responds as
27 follows:
28

1 Masco Corporation is not involved in the day-to-day operations of its subsidiaries and
2 does not have direct knowledge of any such mention of Masco Corporation or its subsidiaries by
3 EnergySense.

4 **ENERGYSENSE'S RESPONSE TO REQUEST NO. 17:**

5 Respondent incorporates by reference each of its general objections and reservations.
6 Subject to and without waiving the foregoing objections, EnergySense responds as follows:

7 EnergySense does not mention any services provided by Masco Corporation or any other
8 Masco-related companies in bid responses or price sheets.

9
10 Dated: October 31, 2008

Respectfully submitted,

11 SONNENSCHN NATH & ROSENTHAL LLP

12
13 By 

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TAB 1

Agreement

This Agreement (the "Agreement") is made as of January 1, 2008 by and between Masco Contractor Services of California, Inc. ("Company") and EnergySense, Inc. ("EnergySense").

WHEREFORE,

1. Company contracts with contractors and/or owners (collectively referred to as "Builder") of residential buildings to, among other things, arrange for and administer energy ratings and/or energy efficiency field verification and diagnostic testing of Builder's residential buildings in California by independent, certified and registered Home Energy Rating System ("HERS") raters ("Raters") as required by Title 24, Part 6 of the California Code of Regulations concerning California's Energy Efficiency Standards for Residential and Non-Residential Buildings, related laws and regulations and standards and procedures adopted by the California Energy Commission (collectively, "Title 24") or by other programs or procedures (such as Energy Star).

2. EnergySense has Raters who are certified by and registered with CHEERS, a HERS provider approved by the California Energy Commission under Title 24, to perform field verification and diagnostic testing required for demonstrating compliance with, among other things, Title 24.

3. Company desires, from time to time pursuant to statements of services then agreed upon by the parties, to engage EnergySense to provide, through its Raters, independent energy ratings and/or energy efficiency field verification and diagnostic testing services to Builders as required by Title 24 or as otherwise specified by a Builder, and EnergySense desires to accept such engagements, subject to the parties' further agreement on the scope and terms of each such statement of services.

4. Company and EnergySense desire to set forth in this Agreement certain terms applicable to such engagements and agree that the terms and conditions set forth in this Agreement shall govern each Statement of Services (defined herein), except to the extent otherwise specified herein.

NOW, THEREFORE, the parties agree as follows:

1. Services.

(a) From time to time during this Agreement, the Company may ask EnergySense to provide independent energy efficiency home energy ratings, field verification, data collection, and/or diagnostic testing services (collectively, "Services") for Builders as specified by such Builder in contracts and subcontracts (collectively, the "Builder Contract") entered into by the Company and Builder. EnergySense agrees to perform Services in accordance with the terms and conditions set forth in this Agreement, applicable Builder Contract and applicable Statement of Services (as defined below) as may be tendered to it by Company and accepted by EnergySense. Company is not obligated to retain the services of EnergySense, and Company does not guarantee EnergySense a minimum amount of work. EnergySense is free to reject any tendered work and may contract with the Builder directly to provide Services.

(b) For each project that Company desires to have EnergySense, and EnergySense agrees to, provide Services, Company and EnergySense shall complete and sign a Statement of Services in the form of Schedule A or as otherwise agreed by the parties ("Statement of Services"). The Statement of Services shall provide, among other things, a description of the specific Services, the schedule of performance, the Builder's identity, the fee for the Services and any special terms and conditions. EnergySense does not assume, and shall not have, any obligation to inspect or evaluate any work of Company or any third party that is not expressly set forth in the Statement of Services.

(c) For each Statement of Services, Company shall provide to EnergySense a copy of the applicable Builder Contract existing as of the date of that Statement of Services, and EnergySense certifies that it will read and fully comply with the provisions of the Builder Contract directly applicable to the Statement of Services. The provisions of the Builder Contract shall apply to the Statement of Services to be performed by EnergySense regardless of whether assignment or subcontracting is permitted, and EnergySense is bound to the terms of the Builder Contract concerning the Statement of Services to the same extent as the Company is bound. With respect to the applicable Statement of Services, the Company shall assume towards EnergySense all obligations and responsibilities that the Builder under the Builder Contract assumes towards the Company, and EnergySense shall assume towards the Company all obligations and responsibilities that the Company assumes towards the Builder under the Builder Contract. The Company shall have the benefits of all rights, remedies and redress against EnergySense that the Builder has against the Company under the Builder Contract, and EnergySense shall have the benefit of all rights, remedies and redress against the Company which the Company has against the Builder, insofar as applicable to this Agreement and the applicable Statement of Services. If the any provision of the Builder Contract is inconsistent with a provision of this Agreement, this Agreement, together with the respective Statement of Services, shall govern.

(d) EnergySense shall take reasonable safety precautions in connection with performing the Services and shall comply with all safety measures whether established by the Company, the respective Builder Contract or by law. EnergySense shall keep the premises and surrounding area free from accumulation of waste materials or rubbish resulting from the Services. Time is of the essence in the performance of the Services. EnergySense shall conform to the Company's or the Builder's schedule, including all revisions, and perform the Services in a prompt and diligent manner.

(e) EnergySense shall provide Services using only Raters who are properly trained, qualified, certified, and experienced. For Services relating to Title 24, the Raters must be certified by and registered with a HERS provider ("Provider") approved by the California Energy Commission, such as CHEERS. EnergySense and its Raters shall provide Services using appropriate materials, analytical and diagnostic tools and procedures, and EnergySense shall be responsible for supplying these materials and tools at its cost and expense. EnergySense shall provide test results and other data from its Services (collectively, "Data") to those persons and entities, including Builder, local building officials and Provider, as required by the Builder Contract; applicable program, code, regulation or law (including, without limitation, Title 24), or otherwise in the forms specified by such persons. EnergySense and its Raters shall not knowingly provide untrue, inaccurate or incomplete Data to the Company or to any other person to whom it provides Data in accordance with this Agreement.

(f) Company and EnergySense agree that EnergySense and its Raters shall, and can, perform the Services impartially and independently, without influence from any person or entity and that neither this Agreement nor the parties' relationship shall have any affect or influence on the results of any energy rating, field verification or diagnostic test performed by EnergySense pursuant to this Agreement, even if performed on the Company's work. Neither EnergySense nor any Rater shall accept payment or consideration of any kind from any person in exchange for reporting Data that was not in fact gathered and reported in compliance with applicable procedures, programs, codes, regulations and laws, including, without limitation, Title 24.

(g) EnergySense does not represent, warrant or guaranty the specific results of any energy rating, field verification or diagnostic test or that any specific energy rating, field verification or diagnostic test on any residential building will pass (or not) any specific criteria or requirement. EnergySense shall not be responsible for any failure of any residential building to pass any energy rating, field verification or diagnostic test, except to the extent that the Rater caused such failure by its own failure to comply with its obligations under this Agreement.

(h) EnergySense shall not be responsible to address or correct any problems, defects, issues or other corrections identified by EnergySense as a result of the Services, except to report Data as set forth in this Agreement.

(i) Neither EnergySense nor any Rater shall advocate or recommend the use of any service or product of Company to any Builder or other person as a means of gaining increased business with the Company.

2. Company Obligations.

(a) During the term of this Agreement, Company shall provide administration services for EnergySense relating to the Services, such as scheduling Raters to provide Services, invoicing and collecting from Builders for Services rendered, and other services agreed to by the parties or specified by a Builder from time to time.

(b) Company shall correct, as appropriate and to the extent consistent with the applicable Builder Contract, any installation or other deficiency, problem, issue or defect in its work for the Builder identified by EnergySense as a result of the Services.

(c) Company shall be solely responsible for the correctness of the plans and specifications and shall release and hold harmless EnergySense from any damages resulting from improper, inadequate or vague information supplied by Company.

3. Fee Schedule. EnergySense has established a Recommended Fee Schedule for its Services ("Schedule"), which it may modify or change in its discretion, for use by Company for purposes of this Agreement. EnergySense's current Schedule is attached as Exhibit B.

4. Payment Terms.

(a) Company agrees to pay EnergySense for Services in the amount set forth in the Statement of Services (which amount shall equal the fee amount that Company, in its discretion, charges Builder as set forth in the Builder Contract for such Services). EnergySense shall provide to Company sufficient documentation to show that the Services set forth in the respective Statement of Services have been completed. Company shall pay EnergySense for such Services upon its invoicing Builder for such Services. Payments by Company to EnergySense for each Statement of Services shall be traceable, through audit if necessary, to Company's invoice to, and payment from, the Builder.

(b) EnergySense agrees to pay, if any, all of its subcontractors and material suppliers for the particular Statement of Services. Company shall have the right to require as a condition to any such payment, mechanic's lien or claim waivers from EnergySense and its subcontractors and the other material suppliers. If Company has a good faith reasonable belief that EnergySense is not paying or is delaying payment to its subcontractors or material suppliers, then Company shall have the right to make payment to EnergySense by joint checks until EnergySense provides Company with reasonable assurances that all claims have been paid and that all subcontractors will be in the future be timely paid.

5. Warranty. EnergySense warrants that the Services will be performed by Raters having appropriate certification, training and experience in a good and workmanlike manner according to practices and standards generally accepted in the industry and in accordance with applicable specifications, Statement of Services and all laws, ordinances, codes, regulations and lawful requirements, including Title 24. This warranty shall be in addition to, and not in limitation of, any other express warranty authorized or required by the respective Builder Contract for Services. THIS EXPRESS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED.

6. **Compliance with Laws.** EnergySense shall comply with all applicable laws, ordinances, rules and regulations in connection with performing the Services, including, without limitation, Title 24 and the Occupational Safety and Health Act of 1970 and any and all amendments, rules and regulations issued pursuant thereto and standards and procedures adopted by the California Energy Commission pursuant to Title 24. EnergySense shall secure and pay for all permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Services.

7. **Liability Insurance.** During the term of this Agreement, EnergySense shall, at its cost and expense, maintain commercial general liability, automobile liability and workman's compensation insurance required by law and each in amounts not less than U.S. \$1 million with insurer(s) satisfactory to the Company. In addition, for each Statement of Work, EnergySense shall maintain insurance coverage of the types and in the amounts required under the applicable Builder Contract.

8. **Indemnity.** To the fullest extent permitted by law, EnergySense shall defend, indemnify and hold harmless the Company (and if required by the applicable Builder Contract, the Builder) and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney fees, directly arising out of or resulting from EnergySense's performance of the Statement of Services or breach of this Agreement. Notwithstanding the foregoing, for each Statement of Work, EnergySense agrees to provide such indemnification to Builder and/or the Company as required by the applicable Builder Contract.

9. **Independent Contractor.** Company and EnergySense agree that, for all purposes, EnergySense is an independent contractor and that neither EnergySense nor its Raters will be an employee, servant, agent, partner or joint venturer of Company or any of its directors, officers or employees. Neither party has authority to assume or create any obligation or liability, express or implied, on behalf of the other party or to bind the other party in any manner. EnergySense will be fully responsible for the payment of all social security taxes, unemployment contributions and federal and state income tax related to the sums paid to it by the Company under this Agreement. EnergySense shall determine the means and manner of its performance of the Services and shall not be required to follow any routine or procedure established or prescribed by the Company. Neither EnergySense nor its employees or agents shall be subject to direction or control by the Company except to the extent, if any, such direction or control may be specifically required by applicable law or regulation. EnergySense shall be fully responsible for determining labor relations policies, wage rates and fringe benefits with respect to its employees. EnergySense will be fully responsible for compliance with all federal or state laws regulating taxes, pension plans, welfare plans, fringe benefits, wages, or other compensation or any other matters relating to its employees.

10. **Liability.** EnergySense's maximum liability, if any, for any and all damages whatsoever relating to the Services shall be limited to the sums paid to EnergySense for the Statement of Services giving rise to the liability. Neither party shall be liable for any consequential, incidental, indirect, special, or punitive damages or attorneys' fees to the other party or any other person or entity.

11. **Termination.** Either party may terminate this Agreement, with or without cause, upon 60 days prior written notice to the other party. The Company shall pay EnergySense for Services completed to the date of termination. EnergySense may complete any Statement of Services in process on the date of termination, and the Company shall pay EnergySense for such services.

12. **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand and receipted for by the party to whom it was directed or sent by express courier, charges prepaid by the shipper, to the address first above written or to such other address as a party may direct hereunder.

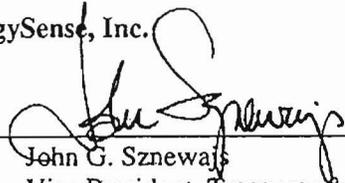
13. **Choice of Law.** This Agreement shall be governed by the laws of the state of Delaware without giving effect to conflict of law principles.

14. **Miscellaneous.** This Agreement, together with the respective Statements of Services, constitutes the entire agreement between the parties and supersedes any and all prior and other agreements and understandings of the parties, whether oral or written, with respect to the subject matter of this Agreement. No amendment of this Agreement or waiver of any of its terms shall be effective unless it is in a writing signed by authorized representatives of both parties. If any term of this Agreement is determined to be invalid or unenforceable by a court, arbitrator or tribunal of competent jurisdiction, the validity or enforceability of the remaining terms shall not be affected. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Neither party shall be liable to the other for default or delay in performing its obligations (except failure to pay) under this Agreement caused by force majeure or any other event or occurrence beyond the reasonable control of such party.

Masco Contractor Services of California, Inc.

By: 
Lawrence F. Leaman
Vice President

EnergySense, Inc.

By: 
John G. Sznewaj
Vice President, Treasurer & Asst. Secretary

SCHEDULE A
STATEMENT OF SERVICES

DATE:

PROJECT:

LOCATION:

BUILDER:

SUBCONTRACTOR:

PLANS:

1. **Description of Services.**
 <INSERT DESCRIPTION>
2. **Date of Commencement.** <INSERT DATE>
3. **Price.** <INSERT PRICING INFO>
4. **Other Applicable Terms and Conditions.** <INSERT OTHER INFO>

SCHEDULE B
RECOMMENDED FEE SCHEDULE

1 24 and Energy Star HERS Rater Price listings

100% Duct Testing (includes registry & paperwork fee)*	
Measure	Cost
1 System Duct Test	\$150.00 - 180.00
Additional Systems Per Lot	\$75.00

Sample (1 in 7) Duct Testing*	
Measure	Cost
Test 1 in 7 with registry for all homes*	\$50.00 - 90.00

Additional Tests – with Duct Testing*	
Measure	Cost
Infiltration – Blower Door	\$50.00 - 80.00
Adequate Air Flow	\$40.00 - 50.00
Room-to-room CFM Testing	\$40.00 - 50.00
Air Handler Fan Watt Draw	\$40.00 - 50.00
Quality Insulation	\$20.00 - 40.00
Supply Duct Location	\$20.00 - 40.00
TXV	\$10.00
Energy Star Measures	\$20.00 - 40.00
EER	\$10.00
Maximum Cooling Capacity (requires other HERS measures to be taken)	\$10.00
Solar Inspection	\$30.00 – 70.00

Inspections – without Duct Testing*	
Measure	Cost
Quality Insulation	\$80.00 - 110.00
TXV	\$50.00 - 80.00
Supply Duct Location	\$50.00 - 80.00
Energy Star Measures	\$50.00 - 80.00
EER	\$50.00 - 80.00
Maximum Cooling Capacity	N/A
Infiltration	\$125.00 - 155.00
Adequate Air Flow	\$80.00 - 100.00
Room-to-room CFM testing	\$80.00 - 100.00
Air Handler Fan Watt Draw	\$80.00 - 100.00
Solar Inspection	\$50.00 – 80.00

Tax Credit Processing Fee	\$25.00
Energy Star Fee	\$12.00

*Note: Please add an additional \$100 charge for custom homes or 1 lot at a time testing. (Only one lot will be tested on the requested test date) These prices are an estimate only and may change without notice. Prices valid 90 days from receipt of this document

Total Home Analysis (Comfort Evaluations)*	
Measure	Cost
Field Evaluation & Detailed Report*	\$400.00
Re-inspection after completion of recommended action.	\$250.00

Complete Total Home Analysis including but not limited to:

1. Room-to-room Air Flow Measurements.
2. A velocity reading at the supply registers.
3. Visual attic insulation inspection.
4. Visual duct inspection.
5. Multi point laser thermometer readings of wall insulation.
6. Tight Duct testing.
7. Infiltration testing.
8. Manual J report (supplied by HVAC, energy consultant, or generated).
 - a. Heating
 - b. Cooling
9. Summary Report:
 - a. Findings from previous trade inspections and noted corrections.
 - b. Findings by Total Home Analysis tester.
 - c. Recommended action.
10. Re-inspection if requested and revision of report based upon corrective action.

*Testing will include the measurements and reports listed below, however all test may not be performed or reports completed based upon the actual conditions of the residence at the time of the Analysis

Agreement

This Agreement (the "Agreement") is made as of November 16, 2006 by and between Builder Services Group, Inc. and its subsidiaries ("Company") and EnergySense, Inc. ("EnergySense").

WHEREFORE,

1. Company contracts with contractors and/or owners (collectively referred to as "Builder") of residential buildings to, among other things, arrange for and administer energy ratings and/or energy efficiency field verification and diagnostic testing of Builder's residential buildings in California by independent, certified and registered Home Energy Rating System ("HERS") raters ("Raters") as required by Title 24, Part 6 of the California Code of Regulations concerning California's Energy Efficiency Standards for Residential and Non-Residential Buildings, related laws and regulations and standards and procedures adopted by the California Energy Commission (collectively, "Title 24") or by other programs or procedures (such as Energy Star).

2. EnergySense has Raters who are certified by and registered with CHEERS, a HERS provider approved by the California Energy Commission under Title 24, to perform field verification and diagnostic testing required for demonstrating compliance with, among other things, Title 24.

3. Company desires, from time to time pursuant to statements of services then agreed upon by the parties, to engage EnergySense to provide, through its Raters, independent energy ratings and/or energy efficiency field verification and diagnostic testing services to Builders as required by Title 24 or as otherwise specified by a Builder, and EnergySense desires to accept such engagements, subject to the parties' further agreement on the scope and terms of each such statement of services.

4. Company and EnergySense desire to set forth in this Agreement certain terms applicable to such engagements and agree that the terms and conditions set forth in this Agreement shall govern each Statement of Services (defined herein), except to the extent otherwise specified herein.

NOW, THEREFORE, the parties agree as follows:

1. **Services.**

(a) From time to time during this Agreement, the Company may ask EnergySense to provide independent energy efficiency home energy ratings, field verification, data collection, and/or diagnostic testing services (collectively, "Services") for Builders as specified by such Builder in contracts and subcontracts (collectively, the "Builder Contract") entered into by the Company and Builder. EnergySense agrees to perform Services in accordance with the terms and conditions set forth in this Agreement, applicable Builder Contract and applicable Statement of Services (as defined below) as may be tendered to it by Company and accepted by EnergySense. Company is not obligated to retain the services of EnergySense, and Company does not guarantee EnergySense a minimum amount of work. EnergySense is free to reject any tendered work and may contract with the Builder directly to provide Services.

(b) For each project that Company desires to have EnergySense, and EnergySense agrees to, provide Services, Company and EnergySense shall complete and sign a Statement of Services in the form of Schedule A or as otherwise agreed by the parties ("Statement of Services"). The Statement of Services shall provide, among other things, a description of the specific Services, the schedule of performance, the Builder's identity, the fee for the Services and any special terms and conditions. EnergySense does not assume, and shall not have, any obligation to inspect or evaluate any work of Company or any third party that is not expressly set forth in the Statement of Services.

(c) For each Statement of Services, Company shall provide to EnergySense a copy of the applicable Builder Contract existing as of the date of that Statement of Services, and EnergySense certifies that it will read and fully comply with the provisions of the Builder Contract directly applicable to the Statement of Services. The provisions of the Builder Contract shall apply to the Statement of Services to be performed by EnergySense regardless of whether assignment or subcontracting is permitted, and EnergySense is bound to the terms of the Builder Contract concerning the Statement of Services to the same extent as the Company is bound. With respect to the applicable Statement of Services, the Company shall assume towards EnergySense all obligations and responsibilities that the Builder under the Builder Contract assumes towards the Company, and EnergySense shall assume towards the Company all obligations and responsibilities that the Company assumes towards the Builder under the Builder Contract. The Company shall have the benefits of all rights, remedies and redress against EnergySense that the Builder has against the Company under the Builder Contract, and EnergySense shall have the benefit of all rights, remedies and redress against the Company which the Company has against the Builder, insofar as applicable to this Agreement and the applicable Statement of Services. If the any provision of the Builder Contract is inconsistent with a provision of this Agreement, this Agreement, together with the respective Statement of Services, shall govern.

(d) EnergySense shall take reasonable safety precautions in connection with performing the Services and shall comply with all safety measures whether established by the Company, the respective Builder Contract or by law. EnergySense shall keep the premises and surrounding area free from accumulation of waste materials or rubbish resulting from the Services. Time is of the essence in the performance of the Services. EnergySense shall conform to the Company's or the Builder's schedule, including all revisions, and perform the Services in a prompt and diligent manner.

(e) EnergySense shall provide Services using only Raters who are properly trained, qualified, certified, and experienced. For Services relating to Title 24, the Raters must be certified by and registered with a HERS provider ("Provider") approved by the California Energy Commission, such as CHEERS. EnergySense and its Raters shall provide Services using appropriate materials, analytical and diagnostic tools and procedures, and EnergySense shall be responsible for supplying these materials and tools at its cost and expense. EnergySense shall provide test results and other data from its Services (collectively, "Data") to those persons and entities, including Builder, local building officials and Provider, as required by the Builder Contract; applicable program, code, regulation or law (including, without limitation, Title 24), or otherwise in the forms specified by such persons. EnergySense and its Raters shall not knowingly provide untrue, inaccurate or incomplete Data to the Company or to any other person to whom it provides Data in accordance with this Agreement.

(f) Company and EnergySense agree that EnergySense and its Raters shall, and can, perform the Services impartially and independently, without influence from any person or entity and that neither this Agreement nor the parties' relationship shall have any affect or influence on the results of any energy rating, field verification or diagnostic test performed by EnergySense pursuant to this Agreement, even if performed on the Company's work. Neither EnergySense nor any Rater shall accept payment or consideration of any kind from any person in exchange for reporting Data that was not in fact gathered and reported in compliance with applicable procedures, programs, codes, regulations and laws, including, without limitation, Title 24.

(g) EnergySense does not represent, warrant or guaranty the specific results of any energy rating, field verification or diagnostic test or that any specific energy rating, field verification or diagnostic test on any residential building will pass (or not) any specific criteria or requirement. EnergySense shall not be responsible for any failure of any residential building to pass any energy rating, field verification or diagnostic test, except to the extent that the Rater caused such failure by its own failure to comply with its obligations under this Agreement.

(h) EnergySense shall not be responsible to address or correct any problems, defects, issues or other corrections identified by EnergySense as a result of the Services, except to report Data as set forth in this Agreement.

(i) Neither EnergySense nor any Rater shall advocate or recommend the use of any service or product of Company to any Builder or other person as a means of gaining increased business with the Company.

2. Company Obligations.

(a) During the term of this Agreement, Company shall provide administration services for EnergySense relating to the Services, such as scheduling Raters to provide Services, invoicing and collecting from Builders for Services rendered, and other services agreed to by the parties or specified by a Builder from time to time.

(b) Company shall correct, as appropriate and to the extent consistent with the applicable Builder Contract, any installation or other deficiency, problem, issue or defect in its work for the Builder identified by EnergySense as a result of the Services.

(c) Company shall be solely responsible for the correctness of the plans and specifications and shall release and hold harmless EnergySense from any damages resulting from improper, inadequate or vague information supplied by Company.

3. Fee Schedule. EnergySense has established a Recommended Fee Schedule for its Services ("Schedule"), which it may modify or change in its discretion, for use by Company for purposes of this Agreement. EnergySense's current Schedule is attached as Exhibit B.

4. Payment Terms.

(a) Company agrees to pay EnergySense for Services in the amount set forth in the Statement of Services (which amount shall equal the fee amount that Company, in its discretion, charges Builder as set forth in the Builder Contract for such Services). EnergySense shall provide to Company sufficient documentation to show that the Services set forth in the respective Statement of Services have been completed. Company shall pay EnergySense for such Services upon its invoicing Builder for such Services. Payments by Company to EnergySense for each Statement of Services shall be traceable, through audit if necessary, to Company's invoice to, and payment from, the Builder.

(b) EnergySense agrees to pay, if any, all of its subcontractors and material suppliers for the particular Statement of Services. Company shall have the right to require as a condition to any such payment, mechanic's lien or claim waivers from EnergySense and its subcontractors and the other material suppliers. If Company has a good faith reasonable belief that EnergySense is not paying or is delaying payment to its subcontractors or material suppliers, then Company shall have the right to make payment to EnergySense by joint checks until EnergySense provides Company with reasonable assurances that all claims have been paid and that all subcontractors will be in the future be timely paid.

5. Warranty. EnergySense warrants that the Services will be performed by Raters having appropriate certification, training and experience in a good and workmanlike manner according to practices and standards generally accepted in the industry and in accordance with applicable specifications, Statement of Services and all laws, ordinances, codes, regulations and lawful requirements, including Title 24. This warranty shall be in addition to, and not in limitation of, any other express warranty authorized or required by the respective Builder Contract for Services. **THIS EXPRESS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED.**

6. **Compliance with Laws.** EnergySense shall comply with all applicable laws, ordinances, rules and regulations in connection with performing the Services, including, without limitation, Title 24 and the Occupational Safety and Health Act of 1970 and any and all amendments, rules and regulations issued pursuant thereto and standards and procedures adopted by the California Energy Commission pursuant to Title 24. EnergySense shall secure and pay for all permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Services.

7. **Liability Insurance.** During the term of this Agreement, EnergySense shall, at its cost and expense, maintain commercial general liability, automobile liability and workman's compensation insurance required by law and each in amounts not less than U.S. \$1 million with insurer(s) satisfactory to the Company. In addition, for each Statement of Work, EnergySense shall maintain insurance coverage of the types and in the amounts required under the applicable Builder Contract.

8. **Indemnity.** To the fullest extent permitted by law, EnergySense shall defend, indemnify and hold harmless the Company (and if required by the applicable Builder Contract, the Builder) and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney fees, directly arising out of or resulting from EnergySense's performance of the Statement of Services or breach of this Agreement. Notwithstanding the foregoing, for each Statement of Work, EnergySense agrees to provide such indemnification to Builder and/or the Company as required by the applicable Builder Contract.

9. **Independent Contractor.** Company and EnergySense agree that, for all purposes, EnergySense is an independent contractor and that neither EnergySense nor its Raters will be an employee, servant, agent, partner or joint venturer of Company or any of its directors, officers or employees. Neither party has authority to assume or create any obligation or liability, express or implied, on behalf of the other party or to bind the other party in any manner. EnergySense will be fully responsible for the payment of all social security taxes, unemployment contributions and federal and state income tax related to the sums paid to it by the Company under this Agreement. EnergySense shall determine the means and manner of its performance of the Services and shall not be required to follow any routine or procedure established or prescribed by the Company. Neither EnergySense nor its employees or agents shall be subject to direction or control by the Company except to the extent, if any, such direction or control may be specifically required by applicable law or regulation. EnergySense shall be fully responsible for determining labor relations policies, wage rates and fringe benefits with respect to its employees. EnergySense will be fully responsible for compliance with all federal or state laws regulating taxes, pension plans, welfare plans, fringe benefits, wages, or other compensation or any other matters relating to its employees.

10. **Liability.** EnergySense's maximum liability, if any, for any and all damages whatsoever relating to the Services shall be limited to the sums paid to EnergySense for the Statement of Services giving rise to the liability. Neither party shall be liable for any consequential, incidental, indirect, special, or punitive damages or attorneys' fees to the other party or any other person or entity.

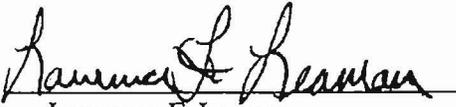
11. **Termination.** Either party may terminate this Agreement, with or without cause, upon 60 days prior written notice to the other party. The Company shall pay EnergySense for Services completed to the date of termination. EnergySense may complete any Statement of Services in process on the date of termination, and the Company shall pay EnergySense for such services.

12. **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand and receipted for by the party to whom it was directed or sent by express courier, charges prepaid by the shipper, to the address first above written or to such other address as a party may direct hereunder.

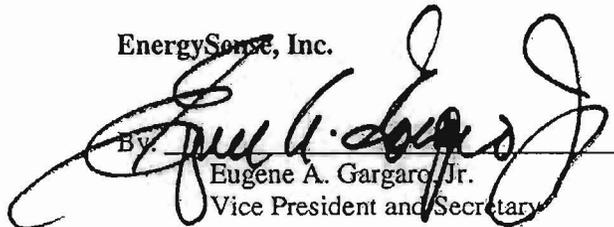
13. **Choice of Law.** This Agreement shall be governed by the laws of the state of Delaware without giving effect to conflict of law principles.

14. **Miscellaneous.** This Agreement, together with the respective Statements of Services, constitutes the entire agreement between the parties and supersedes any and all prior and other agreements and understandings of the parties, whether oral or written, with respect to the subject matter of this Agreement. No amendment of this Agreement or waiver of any of its terms shall be effective unless it is in a writing signed by authorized representatives of both parties. If any term of this Agreement is determined to be invalid or unenforceable by a court, arbitrator or tribunal of competent jurisdiction, the validity or enforceability of the remaining terms shall not be affected. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Neither party shall be liable to the other for default or delay in performing its obligations (except failure to pay) under this Agreement caused by force majeure or any other event or occurrence beyond the reasonable control of such party.

Builder Services Group, Inc.

By: 
Lawrence F. Leaman
Vice President

EnergySense, Inc.

By: 
Eugene A. Gargaro, Jr.
Vice President and Secretary

SCHEDULE A
STATEMENT OF SERVICES

DATE:

PROJECT:

LOCATION:

BUILDER:

SUBCONTRACTOR:

PLANS:

1. **Description of Services.**
 <INSERT DESCRIPTION>
2. **Date of Commencement.** <INSERT DATE>
3. **Price.** <INSERT PRICING INFO>
4. **Other Applicable Terms and Conditions.** <INSERT OTHER INFO>

SCHEDULE B

RECOMMENDED FEE SCHEDULE

Agreement

This Agreement (the "Agreement") is made as of November 16, 2006 by and between American National Services, Inc. and its subsidiaries ("Company") and EnergySense, Inc. ("EnergySense").

WHEREFORE,

1. Company contracts with contractors and/or owners (collectively referred to as "Builder") of residential buildings to, among other things, arrange for and administer energy ratings and/or energy efficiency field verification and diagnostic testing of Builder's residential buildings in California by independent, certified and registered Home Energy Rating System ("HERS") raters ("Raters") as required by Title 24, Part 6 of the California Code of Regulations concerning California's Energy Efficiency Standards for Residential and Non-Residential Buildings, related laws and regulations and standards and procedures adopted by the California Energy Commission (collectively, "Title 24") or by other programs or procedures (such as Energy Star).

2. EnergySense has Raters who are certified by and registered with CHEERS, a HERS provider approved by the California Energy Commission under Title 24, to perform field verification and diagnostic testing required for demonstrating compliance with, among other things, Title 24.

3. Company desires, from time to time pursuant to statements of services then agreed upon by the parties, to engage EnergySense to provide, through its Raters, independent energy ratings and/or energy efficiency field verification and diagnostic testing services to Builders as required by Title 24 or as otherwise specified by a Builder, and EnergySense desires to accept such engagements, subject to the parties' further agreement on the scope and terms of each such statement of services.

4. Company and EnergySense desire to set forth in this Agreement certain terms applicable to such engagements and agree that the terms and conditions set forth in this Agreement shall govern each Statement of Services (defined herein), except to the extent otherwise specified herein.

NOW, THEREFORE, the parties agree as follows:

1. Services.

(a) From time to time during this Agreement, the Company may ask EnergySense to provide independent energy efficiency home energy ratings, field verification, data collection, and/or diagnostic testing services (collectively, "Services") for Builders as specified by such Builder in contracts and subcontracts (collectively, the "Builder Contract") entered into by the Company and Builder. EnergySense agrees to perform Services in accordance with the terms and conditions set forth in this Agreement, applicable Builder Contract and applicable Statement of Services (as defined below) as may be tendered to it by Company and accepted by EnergySense. Company is not obligated to retain the services of EnergySense, and Company does not guarantee EnergySense a minimum amount of work. EnergySense is free to reject any tendered work and may contract with the Builder directly to provide Services.

(b) For each project that Company desires to have EnergySense, and EnergySense agrees to, provide Services, Company and EnergySense shall complete and sign a Statement of Services in the form of Schedule A or as otherwise agreed by the parties ("Statement of Services"). The Statement of Services shall provide, among other things, a description of the specific Services, the schedule of performance, the Builder's identity, the fee for the Services and any special terms and conditions. EnergySense does not assume, and shall not have, any obligation to inspect or evaluate any work of Company or any third party that is not expressly set forth in the Statement of Services.

(c) For each Statement of Services, Company shall provide to EnergySense a copy of the applicable Builder Contract existing as of the date of that Statement of Services, and EnergySense certifies that it will read and fully comply with the provisions of the Builder Contract directly applicable to the Statement of Services. The provisions of the Builder Contract shall apply to the Statement of Services to be performed by EnergySense regardless of whether assignment or subcontracting is permitted, and EnergySense is bound to the terms of the Builder Contract concerning the Statement of Services to the same extent as the Company is bound. With respect to the applicable Statement of Services, the Company shall assume towards EnergySense all obligations and responsibilities that the Builder under the Builder Contract assumes towards the Company, and EnergySense shall assume towards the Company all obligations and responsibilities that the Company assumes towards the Builder under the Builder Contract. The Company shall have the benefits of all rights, remedies and redress against EnergySense that the Builder has against the Company under the Builder Contract, and EnergySense shall have the benefit of all rights, remedies and redress against the Company which the Company has against the Builder, insofar as applicable to this Agreement and the applicable Statement of Services. If the any provision of the Builder Contract is inconsistent with a provision of this Agreement, this Agreement, together with the respective Statement of Services, shall govern.

(d) EnergySense shall take reasonable safety precautions in connection with performing the Services and shall comply with all safety measures whether established by the Company, the respective Builder Contract or by law. EnergySense shall keep the premises and surrounding area free from accumulation of waste materials or rubbish resulting from the Services. Time is of the essence in the performance of the Services. EnergySense shall conform to the Company's or the Builder's schedule, including all revisions, and perform the Services in a prompt and diligent manner.

(e) EnergySense shall provide Services using only Raters who are properly trained, qualified, certified, and experienced. For Services relating to Title 24, the Raters must be certified by and registered with a HERS provider ("Provider") approved by the California Energy Commission, such as CHEERS. EnergySense and its Raters shall provide Services using appropriate materials, analytical and diagnostic tools and procedures, and EnergySense shall be responsible for supplying these materials and tools at its cost and expense. EnergySense shall provide test results and other data from its Services (collectively, "Data") to those persons and entities, including Builder, local building officials and Provider, as required by the Builder Contract; applicable program, code, regulation or law (including, without limitation, Title 24), or otherwise in the forms specified by such persons. EnergySense and its Raters shall not knowingly provide untrue, inaccurate or incomplete Data to the Company or to any other person to whom it provides Data in accordance with this Agreement.

(f) Company and EnergySense agree that EnergySense and its Raters shall, and can, perform the Services impartially and independently, without influence from any person or entity and that neither this Agreement nor the parties' relationship shall have any affect or influence on the results of any energy rating, field verification or diagnostic test performed by EnergySense pursuant to this Agreement, even if performed on the Company's work. Neither EnergySense nor any Rater shall accept payment or consideration of any kind from any person in exchange for reporting Data that was not in fact gathered and reported in compliance with applicable procedures, programs, codes, regulations and laws, including, without limitation, Title 24.

(g) EnergySense does not represent, warrant or guaranty the specific results of any energy rating, field verification or diagnostic test or that any specific energy rating, field verification or diagnostic test on any residential building will pass (or not) any specific criteria or requirement. EnergySense shall not be responsible for any failure of any residential building to pass any energy rating, field verification or diagnostic test, except to the extent that the Rater caused such failure by its own failure to comply with its obligations under this Agreement.

(h) EnergySense shall not be responsible to address or correct any problems, defects, issues or other corrections identified by EnergySense as a result of the Services, except to report Data as set forth in this Agreement.

(i) Neither EnergySense nor any Rater shall advocate or recommend the use of any service or product of Company to any Builder or other person as a means of gaining increased business with the Company.

2. Company Obligations.

(a) During the term of this Agreement, Company shall provide administration services for EnergySense relating to the Services, such as scheduling Raters to provide Services, invoicing and collecting from Builders for Services rendered, and other services agreed to by the parties or specified by a Builder from time to time.

(b) Company shall correct, as appropriate and to the extent consistent with the applicable Builder Contract, any installation or other deficiency, problem, issue or defect in its work for the Builder identified by EnergySense as a result of the Services.

(c) Company shall be solely responsible for the correctness of the plans and specifications and shall release and hold harmless EnergySense from any damages resulting from improper, inadequate or vague information supplied by Company.

3. Fee Schedule. EnergySense has established a Recommended Fee Schedule for its Services (“Schedule”), which it may modify or change in its discretion, for use by Company for purposes of this Agreement. EnergySense’s current Schedule is attached as Exhibit B.

4. Payment Terms.

(a) Company agrees to pay EnergySense for Services in the amount set forth in the Statement of Services (which amount shall equal the fee amount that Company, in its discretion, charges Builder as set forth in the Builder Contract for such Services). EnergySense shall provide to Company sufficient documentation to show that the Services set forth in the respective Statement of Services have been completed. Company shall pay EnergySense for such Services upon its invoicing Builder for such Services. Payments by Company to EnergySense for each Statement of Services shall be traceable, through audit if necessary, to Company’s invoice to, and payment from, the Builder.

(b) EnergySense agrees to pay, if any, all of its subcontractors and material suppliers for the particular Statement of Services. Company shall have the right to require as a condition to any such payment, mechanic’s lien or claim waivers from EnergySense and its subcontractors and the other material suppliers. If Company has a good faith reasonable belief that EnergySense is not paying or is delaying payment to its subcontractors or material suppliers, then Company shall have the right to make payment to EnergySense by joint checks until EnergySense provides Company with reasonable assurances that all claims have been paid and that all subcontractors will be in the future be timely paid.

5. Warranty. EnergySense warrants that the Services will be performed by Raters having appropriate certification, training and experience in a good and workmanlike manner according to practices and standards generally accepted in the industry and in accordance with applicable specifications, Statement of Services and all laws, ordinances, codes, regulations and lawful requirements, including Title 24. This warranty shall be in addition to, and not in limitation of, any other express warranty authorized or required by the respective Builder Contract for Services. **THIS EXPRESS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED.**

6. Compliance with Laws. EnergySense shall comply with all applicable laws, ordinances, rules and regulations in connection with performing the Services, including, without limitation, Title 24 and the Occupational Safety and Health Act of 1970 and any and all amendments, rules and regulations issued pursuant thereto and standards and procedures adopted by the California Energy Commission pursuant to Title 24. EnergySense shall secure and pay for all permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Services.

7. Liability Insurance. During the term of this Agreement, EnergySense shall, at its cost and expense, maintain commercial general liability, automobile liability and workman's compensation insurance required by law and each in amounts not less than U.S. \$1 million with insurer(s) satisfactory to the Company. In addition, for each Statement of Work, EnergySense shall maintain insurance coverage of the types and in the amounts required under the applicable Builder Contract.

8. Indemnity. To the fullest extent permitted by law, EnergySense shall defend, indemnify and hold harmless the Company (and if required by the applicable Builder Contract, the Builder) and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney fees, directly arising out of or resulting from EnergySense's performance of the Statement of Services or breach of this Agreement. Notwithstanding the foregoing, for each Statement of Work, EnergySense agrees to provide such indemnification to Builder and/or the Company as required by the applicable Builder Contract.

9. Independent Contractor. Company and EnergySense agree that, for all purposes, EnergySense is an independent contractor and that neither EnergySense nor its Raters will be an employee, servant, agent, partner or joint venturer of Company or any of its directors, officers or employees. Neither party has authority to assume or create any obligation or liability, express or implied, on behalf of the other party or to bind the other party in any manner. EnergySense will be fully responsible for the payment of all social security taxes, unemployment contributions and federal and state income tax related to the sums paid to it by the Company under this Agreement. EnergySense shall determine the means and manner of its performance of the Services and shall not be required to follow any routine or procedure established or prescribed by the Company. Neither EnergySense nor its employees or agents shall be subject to direction or control by the Company except to the extent, if any, such direction or control may be specifically required by applicable law or regulation. EnergySense shall be fully responsible for determining labor relations policies, wage rates and fringe benefits with respect to its employees. EnergySense will be fully responsible for compliance with all federal or state laws regulating taxes, pension plans, welfare plans, fringe benefits, wages, or other compensation or any other matters relating to its employees.

10. Liability. EnergySense's maximum liability, if any, for any and all damages whatsoever relating to the Services shall be limited to the sums paid to EnergySense for the Statement of Services giving rise to the liability. Neither party shall be liable for any consequential, incidental, indirect, special, or punitive damages or attorneys' fees to the other party or any other person or entity.

11. Termination. Either party may terminate this Agreement, with or without cause, upon 60 days prior written notice to the other party. The Company shall pay EnergySense for Services completed to the date of termination. EnergySense may complete any Statement of Services in process on the date of termination, and the Company shall pay EnergySense for such services.

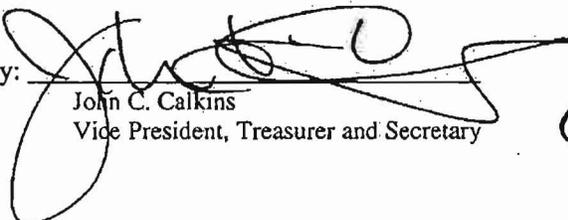
12. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand and receipted for by the party to whom it was directed or sent by express courier, charges prepaid by the shipper, to the address first above written or to such other address as a party may direct hereunder.

13. **Choice of Law.** This Agreement shall be governed by the laws of the state of Delaware without giving effect to conflict of law principles.

14. **Miscellaneous.** This Agreement, together with the respective Statements of Services, constitutes the entire agreement between the parties and supersedes any and all prior and other agreements and understandings of the parties, whether oral or written, with respect to the subject matter of this Agreement. No amendment of this Agreement or waiver of any of its terms shall be effective unless it is in a writing signed by authorized representatives of both parties. If any term of this Agreement is determined to be invalid or unenforceable by a court, arbitrator or tribunal of competent jurisdiction, the validity or enforceability of the remaining terms shall not be affected. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Neither party shall be liable to the other for default or delay in performing its obligations (except failure to pay) under this Agreement caused by force majeure or any other event or occurrence beyond the reasonable control of such party.

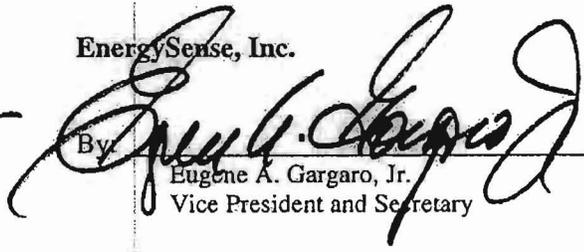
American National Services, Inc.

By:


John C. Calkins
Vice President, Treasurer and Secretary

EnergySense, Inc.

By:


Eugene A. Gargaro, Jr.
Vice President and Secretary

SCHEDULE A

STATEMENT OF SERVICES

DATE:

PROJECT:

LOCATION: -

BUILDER:

SUBCONTRACTOR:

PLANS:

1. **Description of Services.**
<INSERT DESCRIPTION>
2. **Date of Commencement.** <INSERT DATE>
3. **Price.** <INSERT PRICING INFO>
4. **Other Applicable Terms and Conditions.** <INSERT OTHER INFO>

SCHEDULE B

RECOMMENDED FEE SCHEDULE

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TAB 2

Ma Corporation - Officers & Directors

Position Type	Name	Title
Director	Archer, Dennis W.	Director
Officer	Christian, Carolyn M.	Assistant Secretary
Officer	DeMarie, Jr., Donald J.	Executive Vice President
Officer	DeMarie, Jr., Donald J.	Chief Operating Officer
Director	Denomme, Thomas G.	Director
Director	Earley, Jr., Anthony F.	Director
Officer	Gargaro, Jr., Eugene A.	Vice President
Officer	Gargaro, Jr., Eugene A.	Secretary
Director	Istock, Verne G.	Director
Director	Johnston, David L.	Director
Officer	Leekley, John R.	Senior Vice President - General Counsel
Officer	Leekley, John R.	Assistant Secretary
Director	Losh, J. Michael	Director
Officer	Manoogian, Richard A.	Executive Chairman
Director	Manoogian, Richard A.	Executive Chairman
Director	Payne, Lisa A.	Director
Officer	Silverman, Barry J.	Assistant Secretary
Officer	Sznewajs, John G.	Chief Financial Officer
Officer	Sznewajs, John G.	Vice President - Corporate Development
Officer	Sznewajs, John G.	Treasurer
Director	Van Lokeren, Mary Ann	Director
Officer	Wadhams, Timothy	Chief Executive Officer
Director	Wadhams, Timothy	Director
Officer	Wadhams, Timothy	President

TAB 3

EnergySense, Inc.

Directors

Eugene A. Gargaro, Jr. Director

Primary Address: 21001 Van Born Road
Taylor, Michigan 48180

John R. Leekley Director

Primary Address: 21001 Van Born Road
Taylor, Michigan 48180

John G. Sznawajs Director

Primary Address: 21001 Van Born Road
Taylor, Michigan 48180

Officers

David R Bell President

Primary Address:

Eugene A. Gargaro, Jr. Vice President & Secretary

Primary Address: 21001 Van Born Road
Taylor, Michigan 48180

John G. Sznawajs Vice President, Treasurer & Assistant Secretary

Primary Address: 21001 Van Born Road
Taylor, Michigan 48180

Jerry W. Mollien Vice President

Primary Address: 21001 Van Born Road
Taylor, Michigan 48180

Lawrence F. Leaman Vice President

Primary Address: 21001 Van Born Road

Kathy Howard Vice President

Primary Address:

Barry J. Silverman Assistant Secretary

Primary Address: 21001 Van Born Road
Taylor, Michigan 48180

Carolyn M. Christian Assistant Secretary

Primary Address: 21001 Van Born Road
Taylor, Michigan 48180

1 **BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT**

2 **COMMISSION OF THE STATE OF CALIFORNIA**

3
4 **Complaint / Request for Investigation**
5 **Regarding EnergySense / MASCO**

DOCKET NO. 08-CRI-01
Proof of Service List

6
7 **INSTRUCTIONS: All parties shall (1) file a printed, original signed document plus 12**
8 **copies OR file one original signed document and email the document to the Docket**
9 **address below, AND (2) all parties shall also send a printed OR electronic copy of the**
10 **document, plus a proof of declaration, to each of the entities and individuals on the Proof**
11 **of Service List:**

11 CALIFORNIA ENERGY COMMISSION Attn: DOCKET NO. 08-CRI-01 1516 Ninth Street, MS-4 Sacramento, CA 95814-5512 docket@energy.state.ca.us	
12 California Living & Energy Attn: Bill Lilly, President 3015 Dale Court Ceres, CA 95307	Duct Testers, Inc. Attn: Dave Hegarty P.O. Box 266 Ripon, CA 95366
13 Carol A. Davis CHEERS Legal Counsel 3009 Palos Verdes Drive West Palos Verdes Estates, CA 90274	Energy Inspectors Attn: Galo LeBron, CEO 1036 Commerce Street, Suite B San Marco, CA 92078
14 Certified Energy Consulting John Richau, HERS Rater 4782 N. Fruit Avenue Fresno, CA 93705	ConSol Attn: Mike Hodgson 7407 Tam O'Shanter Drive Stockton, CA 95210-3370
15 California Certified Energy Rating & Testing Services (CalCERTS) Attn: Mike Bachand 31 Natoma Street, Suite 120 Folsom, CA 95630	California Building Performance Contractors Association (CBPCA) Attn: Randel Riedel 1000 Broadway, Suite 410 Oakland, CA 94607
16 California Home Energy Efficiency Rating System (CHEERS) Attn: Robert Scott 20422 Beach Boulevard, Suite 235 Huntington Beach, CA 92648	

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SONNENSCHN NATH & ROSENTHAL LLP
525 MARKET STREET, 26TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105
(415) 882-5000

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ENERGY COMMISSION
Arthur H. Rosenfeld, Ph.D., Commissioner
Presiding Committee Member
arosenfe@energy.state.ca.us

Public Adviser
pao@energy.state.ca.us

Jackalyne Pfannenstiel, Chair
Associate Committee Member
ipfannen@energy.state.ca.us
cgraber@energy.state.ca.us

Dennis Beck
Staff Attorney
dbeck@energy.state.ca.us

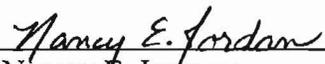
DECLARATION OF SERVICE

I, Nancy E. Jordan, deposited copies of the attached **RESPONDENTS MASCO CORPORATION'S AND ENERGYSENSE, INC.'S RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS AND ADDITIONAL INFORMATION** as specified in the *Efficiency Committee Order Setting Dates for Prehearing Conference and Hearing, and Requiring the Production of Documents and Additional Information* in the United States mail on **October 31, 2008**, at San Francisco, CA, with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, Title 20, Sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.



NANCY E. JORDAN

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